

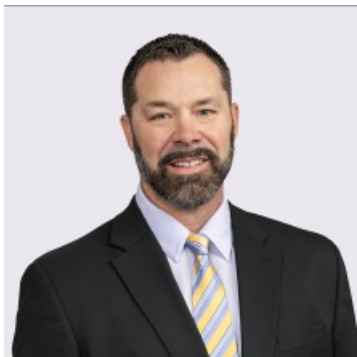
Legal Update Article

Unions Pressure OSHA to Make Temporary COVID-19 Rule Permanent and Cover Manufacturing Companies

By Adam D. Hirtz

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Meet the Authors



Adam D. Hirtz

Principal and Office Litigation
Manager

314-746-4825

Adam.Hirtz@jacksonlewis.com

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Labor unions want to broaden the reach of the [COVID-19 Emergency Temporary Standard \(ETS\) for healthcare settings](#) promulgated by the Occupational Safety and Health Administration (OSHA) on July 10, 2021, and set to expire in December 2021, to manufacturers and other employers. They also want OSHA to make the ETS permanent.

OSHA is signaling that labor unions may not get their way. Consequently, unions might pursue their goals through the bargaining process.

Under the Occupational Safety and Health Act of 1970, an ETS can remain in force for up to six months, then OSHA may supersede it with a permanent standard based on the temporary one. Labor unions have been urging OSHA to revise the July ETS, make it permanent, extend it to all industries, and remove all mention of Centers for Disease Control and Prevention (CDC) guidance from it.

As currently written, the ETS frames vaccination as a recommended measure. However, in its latest update to [non-healthcare guidance on preventing COVID-19](#), OSHA “suggests that employers consider adopting policies that require workers to get vaccinated or to undergo regular COVID-19 testing – in addition to mask wearing and physical distancing – if they remain unvaccinated.”

In a letter to OSHA, the American Nurses Association (ANA) urged “OSHA to vigorously enforce the ETS, while moving forward to adopt a permanent standard for infection protection.” In fact, the ANA contends the ETS should require employers to institute mandatory COVID-19 vaccination programs. Other unions, including the United Steelworkers (USW), are calling for OSHA to extend the ETS to all industry sectors. According to the USW, the ETS should be binding on all workplaces with “no exceptions.”

In a letter to OSHA, USW also asked OSHA to completely remove all references to CDC guidance from the ETS based on its concern over CDC’s frequently changing guidance and fears of “political interference” in CDC’s determinations. USW proposed that OSHA take complete authority over the workplace COVID-19 requirements to increase clarity and consistency in requirement compliance. Moreover, while the CDC is free to revise its policies without warning, OSHA rules change only after a notice period.

Notwithstanding the pressure and proposals from labor unions, on August 31, 2021, during an online healthcare symposium sponsored by OSHA, OSHA’s deputy regulatory chief stated that his agency plans to let its COVID-19 ETS expire at the conclusion of the six-month sunset period. He acknowledged, however, that future developments could lead officials to reverse course.

Labor unions are expected to continue to push OSHA to expand its authority over COVID-19 and other infectious diseases. Assuming the ETS is not revised and made permanent, manufacturing companies will continue to have some flexibility and autonomy in determining how best to protect employees from COVID-19 within OSHA guidelines. This could still include mandatory vaccination and testing, mask mandates, and other measures. While the situation remains fluid, manufacturers should continue to monitor developments. If unions cannot get OSHA to support their infection disease initiatives through the rulemaking process, they may seek implementation through the bargaining process.

Please contact a Jackson Lewis attorney with any questions.

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